

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

ROBERT B. EUBANK,)
)
Plaintiff,)
)
vs.) **Case No: CV 04-TMP-3449-S**
)
JEFFERSON COUNTY, et al.,)
)
Defendants.)

MEMORANDUM OPINION

The magistrate judge filed his report and recommendation on July 5, 2005, recommending that the motions to dismiss filed by a number of defendants be granted. After plaintiff and some defendants filed objections to the report and recommendation, the magistrate judge filed a modification of the earlier report and recommendation on August 4, 2005, which recommended that two additional defendants be granted a dismissal. Plaintiff filed his objections to the modification on August 17, 2005.

Having now carefully reviewed and considered *de novo* the report and recommendation as modified, the plaintiff's and defendants' objections, and all materials in the court file, the court agrees with the magistrate judge and hereby ADOPTS the report and ACCEPTS the recommendations, as modified. Accordingly,

the court will enter a separate order GRANTING the motions to dismiss filed by defendants Mike Hale (doc. 34); the Board of Trustees of the University of Alabama (doc. 23); University of Alabama Health Services Foundation, P.C., and UAB Health Systems (doc. 24); and Gloria Bahakel (doc. 27), and the claims against these defendants, both in their official or individual capacities, shall be DISMISSED WITH PREJUDICE.

The motion to dismiss by defendant Copac, Inc., for want of personal jurisdiction (doc. 32) will be GRANTED, and the claims against it will be DISMISSED WITHOUT PREJUDICE.

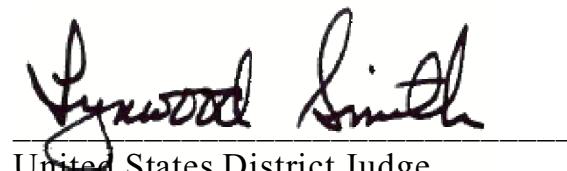
Furthermore, the motion to dismiss filed by defendants Sandra Frazier, Frank Barkers, Ralph Hendrix, and Foster Cook (doc. 25) shall be GRANTED IN PART as to the claims against defendants Sandra Frazier and Frank Barkers, and the claims against these two defendants shall be DISMISSED WITH PREJUDICE; but the motion will be DENIED as to the claims against defendants Ralph Hendrix and Foster Cook.

The motion to dismiss by defendants Alabama State Bar, the Board of Commissioners of the Alabama State Bar, Jeanne Marie Leslie, Anthony McLain, Robert Lusk, and Robert Gwin (Doc. 21) shall be GRANTED as to all claims against defendants the Alabama State Bar and the Board of Commissioners of the Alabama State Bar, against whom all claims shall be DISMISSED WITH PREJUDICE, and

GRANTED as to defendants Jeanne Marie Leslie, Anthony McLain, Robert Lusk, and Robert Gwin, as to whom all claims against them in their *official* capacities and all *federal* claims against them in their *individual* capacities shall be DISMISSED WITH PREJUDICE.¹

This matter is again REFERRED to the magistrate judge for further proceedings.

DONE this 28th day of November, 2005.



United States District Judge

¹ As noted in the report and recommendation, the motion to dismiss did not seek dismissal of any state-law claims pled in the complaint; thus, the viability of such claims was not and is not an issue before the court. Thus, even though the magistrate judge modified his report and recommendation to recommend the dismissal of *all* claims against Robert Gwin, the motion on which such a dismissal might be predicated did not seek dismissal of *state-law* claims. Consequently, even though the complaint sets forth no facts whatsoever concerning defendant Gwin, his motion to dismiss leaves open for another day the viability of state-law claims. Insofar as the magistrate judge's modified report and recommendation recommends dismissal of *all* claims against Gwin, including unchallenged state-law claims, it is REJECTED. The court ADOPTS the original recommendation that the claims against Gwin be dismissed to the same extent as recommended with respect to defendants Leslie, McLain, and Lusk.